IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 13355 of 2006(M)

PETITIONER:

K.M.JANU,
TEACHER, MAHATHMA GANDHI PUBLIC SCHOOL,
AMBADIMALA, CHOTTANIKKARA,
ERNAKULAM DISTRICT, KERALA.

BY ADV. SRI.THOMAS ANTONY
SRI.PRAKASH M.P
SRI.K.C.ELDHO

RESPONDENTS:
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1. **UNION OF INDIA, REP. BY ITS SECRETARY TO GOVERNMENT, MINISTRY OF EDUCATION, NEW DELHI.**

2. **CENTRAL BOARD OF SECONDARY EDUCATION, REP. BY ITS SECRETARY, 2, COMMUNITY CENTRE, PREET VIHAR, NEW DELHI-110 092.**

3. **DAKSHINA BHARATH HINDI PRACHAR SABHA (KERALA), REP. BY ITS SECRETARY, ERNAKULAM, KOCHI-16.**

4. **MAHATHMA GANDHI PUBLIC SCHOOL, AMBADIMALA, REP. BY THE PRINCIPAL, CHOTTANIKKARA, ERNAKULAM DIST., KERALA.**

R1 BY ADV. SRI. AJITH KRISHNAN
R2 BY ADV. SRI. DEVAN RAMACHANDRAN
R3 BY ADV. SRI. P.JACOB VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/09/2007, ALONG WITH W.P.(C).No.6769/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE NOTIFICATION DATED 12.10.2004 OF THE 2ND RESPONDENT.

EXT.P2: COPY OF THE REPRESENTATION DATED 07.09.05 TO THE 3RD RESPONDENT.

EXT.P3: COPY OF THE REPRESENTATION DATED 11.11.05 TO THE 3RD RESPONDENT.

EXT.P4: COPY OF THE LETTER DATED 09.11.05 TO THE 3RD RESPONDENT.

EXT.P4(a): COPY OF THE ENGLISH TRANSLATION OF THE LETTER DATED 09.11.05 TO THE 3RD RESPONDENT.

EXT.P5: COPY OF THE REPRESENTATION DATED 15.11.05 TO THE 3RD RESPONDENT.

EXT.P5(a): COPY OF THE ENGLISH TRANSLATION OF THE REPRESENTATION DATED 15.11.05 TO THE 34E RESPONDENT.

EXT.P6: COPY OF THE LETTER DATED 25.11.05 TO THE 3RD RESPONDENT.

EXT.P6(a): COPY OF THE ENGLISH TRANSLATION OF THE LETTER DATED 25.11.05 TO THE 3RD RESPONDENT.

EXT.P7: COPY OF THE REPRESENTATION DATED 29.11.05 TO THE 3RD RESPONDENT.

EXT.P7(a): COPY OF THE ENGLISH TRANSLATION OF EXT.P7.

EXT.P8: COPY OF THE LETTER DATED 3.12.05 OF THE 3RD RESPONDENT.

EXT.P8(a): COPY OF THE ENGLISH TRANSLATION OF THE LETTER DATED 3.12.05.

EXT.P9: COPY OF THE REPRESENTATION DATED 09.12.05 OF THE PETITIONER.

EXT.P10: COPY OF THE REPRESENTATION DATED 10.04.06 OF THE PETITIONER.

EXT.P11: COPY OF THE POSTAL ACKNOWLEDGMENT CARD.

EXT.P12: COPY OF THE TELEGRAPHIC MESSAGE ADDRESSED TO THE 2ND RESPONDENT.

EXT.P13: COPY OF THE KGTE CERTIFICATE IN TYPEWRITING OF THE PETITIONER.

EXT.P14: COPY OF THE CERTIFICATE OF RASHTRA BASHA EXAMINATION.

EXT.P15: COPY OF THE CERTIFICATE OF PRAVESHIKA EXAMINATION.

EXT.P16: COPY OF THE CERTIFICATE OF NURSERY TEACHERS TRAINING.

EXT.P17: COPY OF THE CERTIFICATE OF HINDI TYPEWRITING EXAMINATION.

EXT.P18: COPY OF THE CERTIFICATE OF VISHAADH EXAMINATION.

EXT.P19: COPY OF THE CERTIFICATE OF M.A. DEGREE (HINDI) EXAMINATION.

EXT.P20: COPY OF THE CERTIFICATE OF PRAVEEN EXAMINATION.

EXT.P21: COPY OF THE CERTIFICATE OF SIKSHA SNATHAK EXAMINATION.

RESPONDENTS EXHIBITS:

EXT.R3(a): COPY OF CERTIFICATE ISSUED BY PEDLITE INDUSTRIES PRIVATE LIMITED, BOMBAY TO THE PETITIONER.

EXT.R3(b): COPY OF THE RELEVANT PORTION(TYPED ONE) OF THE SSLC BOOK OF THE PETITIONER.

EXT.R3(c): COPY OF THE APPOINTMENT ORDER OF THE PETITIONER.

EXT.R3(d): COPY OF COMMUNICATION DATED 17.2.2006 TO THE GENERAL SECRETARY OF THE EMPLOYEES ASSOCIATION.

EXT.R2(1): COPY OF THE RELEVANT PORTIONS OF THE CBSE AFFILIATION BYE LAWS.

TRUE COPY

P.A.TO JUDGE

dvs

KURIAN JOSEPH, J.

W.P. (C). NO. 13355 OF 2006

&

W.P. (C) NO. 6769 OF 2007

Dated this the 14th day of September, 2007.

J U D G M E N T

Petitioners approached this Court praying for a direction to the respondents to permit them to continue in service till they attain the age of 60 years, as Teachers under the Dakshina Bharath Hindi Prachar Sabha (Kerala). There is no dispute that the schools run by the Sabha are affiliated to the Central Board of Secondary Education.

2. Under Chapter VII of the Affiliation Bye-laws of the CBSE, "each school affiliated/to be affiliated with the Board shall frame Service Rules for its employees which will be as per Education Act of the State/U.T., if the Act makes adoption of the same obligatory, otherwise as per Service Rules given in subsequent sections". Under Rule 30 of the Affiliation Bye-laws, "every employee including Head of institution shall retire from service on attaining the age of 60".

3. In the counter affidavit filed by the CBSE it is stated that ".....as per Sections 24(1) and 24(2) of Chapter VII of the

Affiliation Bye Laws of the CBSE, the schools affiliated to the CBSE shall frame their service rules as per the respective State Education Act and should abide by such rules if the same is made obligatory".

4. It is the contention of the petitioners that it is not obligatory on the part of any Educational Agency in the State to follow Kerala Education Act and if that be so, it is obligatory on the part of the management running the CBSE schools to follow the Affiliation Bye-laws. In this context, it has to be seen that Rule 24(2) of the Affiliation Bye-laws contemplates service contract. There is no dispute that as per the service contract, the retirement age is 58 years. According to the petitioners, at the time of entering the service contract, the retirement age was 58 years. But the petitioners seek is only the benefit pursuant to the amendment whereby the retirement age has been enhanced to 60 years. It is submitted that the amendment came into effect on 12.10.2004. (There is no case that any new service contract was signed after the amendment). The writ petitions are filed only in 2006 and 2007, on the verge of retirement of the petitioners.

5. The stand taken by the management is that they have

"adopted the Service Rules of the Kerala State Government invoking Clause 24 of the Affiliation Bye-laws". Sri. Jacob Varghese, learned counsel for the Dakshin Bharath Hindi Prachar Sabha further submits that as per the Kerala Education Act, the retirement age is 55. But in view of the retirement age in various other States and also in view of the settlement the Sabha entered with the employees in the year 1990, they have fixed the retirement age as 58.

Be that as it may, it is now for the petitioners to pursue their surviving grievance in appropriate forum. If, as a matter of fact, the CBSE bye-laws are applicable and in case the management does not follow the same, it is for them to approach the CBSE itself for disaffiliation, that being the sanction. If they have a case that they are entitled to any other benefits in view of the stand taken by the Sabha that they are following the Kerala Education Act, it is for them to approach the Sabha for other eligible benefits, if any.

These writ petitions are disposed of as above.

KURIAN JOSEPH,
JUDGE.

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